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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/709,778

05/27/2004

David J. Armstrong

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05/20/2005

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EXAMINER

DAVIS, CASSANDRA HOPE

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/709,778	Applicant(s) ARMSTRONG, DAVID J.	
	Examiner Cassandra Davis	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Orsini, U. S. Patent 5,027,539.

With respect to claims 1, 2, Orsini teaches a pole restrained kite or airfoil for a vehicle antenna 1, comprising a rising member (Figure 3) having hub with an aperture (22), and first fixed wing 16,18 and a second fixed wind 17,19, in communication with the hub of the rising member. The rising member is in the form of a kite. With respect to claims 2 and 4, since the applicant does not define lightweight, the rising member/balloon taught by Orsini is considered to be lightweight.

With respect to claims 5 and 18, Orsini teaches a pair of sleeves 2 and 3.

2. Claims 1, 2, 5, 7, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Hara, U. S. Patent 5,182,146.

With respect to claim 1, 2, O'Hara teaches a decorative vehicle air speed indicator comprising a staff 12, an arm 40, in communication with the staff, and a fastening means 16 in communications with the arm. O'Hara also teaches a rising member 14 having left and right planar wings extending from a central hub, wherein the rising member 14 rotates as it rising along the staff.

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With respect to claims 5, 7, and 18, O'Hara teaches a plurality of sleeves 52 slidably mounted along the staff.

3. Claims 1, 2, 3, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Tufts, U. S. Patent 2,637,928.

With respect to claims 1, Tufts teaches an ornament a spherical rising member (top member seen in figure 3) having an aperture (not labeled), and left semi-circular fixed wings and right semi-circular fixed wing, wherein the wings are planar with fins extend from the bottom surface.

With respect to claims 2 and 4, since the applicant does not define lightweight, the device taught by Tufts is considered to be lightweight.

Claims 1, 2, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Godman, U. S. Patent 1,927,399.

With respect to claims 1, Godman teaches an airplane comprising a body 6 having an aperture (not labeled), and planar fixed wings extending from the body of the airplane, wherein the wings are perpendicular to the body.

With respect to claim 5, Godman teaches a sleeve 12.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trent et al., U.S. Patent 3,557,447 in view of O'Hara. Trent et al. teaches rising member 12 adapted to rise when wind blows against it. As the rising member rises, it pushes the display member 22 up along the rod member. Trent does not teach the rising member having planar wings. As discussed above, O'Hara teaches a rising member having planar wings. It would have been obvious to one having ordinary skill in the art the time this invention was made to construct the display means 22 taught by Trent with indicia to provide a means to convey a message to the viewer. In addition, it would have been obvious to provide the rising member taught by Trent with wings as taught by O'Hara to provide a lifting means to aid in allowing the wind to rise the rising member.

Response to Arguments

6. Applicant's arguments filed April 11, 2005 have been fully considered but they are not persuasive. The applicant has amended the claim 1 to recite the device has "a smooth pole, disposed through said aperture of said rising member, said rising member rotating in complete rotations about said pole as said rising member rises; and two fixed oppositely disposed wings, extending laterally outward from said rising member, wherein said fixed wings are planar and perpendicular to the plane of said pole." As discussed above the examiner contends, O'Hara, Orsini, and Turfts teaches the new claim limitations.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cassandra Davis whose telephone number is 571-272-6642. The examiner can normally be reached on Monday-Friday 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Cassandra Davis
Primary Examiner
Art Unit 3611

CD
May 17, 2005